

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Mark Kutney, AICP, Development Services Director/ (954) 797-1101

SUBJECT: Reconsideration of Rezoning ZB 1-3-00, Howard Zimmerman Petitioner
14501 Orange Drive/Generally located at the northwest corner of Orange
Drive and SW 142 Avenue

AFFECTED DISTRICT: District 4

TITLE OF AGENDA ITEM:

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, APPROVING REZONING PETITION ZB 1-3-00, CHANGING THE CLASSIFICATION OF CERTAIN LANDS WITHIN THE TOWN OF DAVIE FROM A-1, AGRICULTURAL DISTRICT TO B-3, PLANNED BUSINESS CENTER DISTRICT; AMENDING THE TOWN ZONING MAP TO COMPLY THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF:

On March 18, 2002, Judge Patricia Cocalis of the 17th Judicial Circuit Court of Broward County remanded the subject rezoning application to Town Council for further proceedings consistent with the Court's opinion. The attached staff report is for your review and consideration.

CONCURRENCES: On June 7, 2000, Town Council recommended denial of the rezoning application.

On March 22, 2000, the Planning and Zoning Board recommended approval on subject to the developer's agreement, voluntary deed restrictions, and conceptual master plan.

FISCAL IMPACT: None

RECOMMENDATION: Staff recommends transmittal of the subject application to Town Council for further consideration.

Attachments: Ordinance, Staff Report, Future Land Use Map, Subject Site Map, Supplemental Documents from Michael Burke

ORDINANCE _____

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, APPROVING REZONING PETITION ZB 1-3-00, CHANGING THE CLASSIFICATION OF CERTAIN LANDS WITHIN THE TOWN OF DAVIE FROM A-1, AGRICULTURAL DISTRICT TO B-3, PLANNED BUSINESS CENTER DISTRICT; AMENDING THE TOWN ZONING MAP TO COMPLY THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Davie authorized the publication of a notice of a public hearing as required by law, that the classification of certain lands within the Town be changed from A-1, Agricultural District to B-3, Planned Business Center District;

WHEREAS, said notice was given and publication made as required by law, and a public hearing there under was held on the date of the adoption of this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE FLORIDA:

SECTION 1. That the property herein after described be and the same is hereby rezoned and changed from A-1, Agricultural District to B-3, Planned Business Center District:

a. The subject property is described in Exhibit "A", which is attached hereto and made a part hereof;

SECTION 2. That the zoning map heretofore adopted by the Town Council be and the same is hereby amended to show the property described in Section 1, herein, as B-3, Planned Business Center District.

SECTION 3. All Ordinances or parts of Ordinances in conflict herewith are to the extent of such conflict hereby repealed.

SECTION 4. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this Ordinance.

SECTION 5. This Ordinance shall take effect immediately upon its passage and adoption.

PASSED ON FIRST READING THIS _____ DAY OF _____, 2002.

PASSED ON SECOND READING THIS _____ DAY OF _____, 2002.

ATTEST:

MAYOR/COUNCILMEMBER

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2002.

Application #: ZB 1-3-00
Exhibit "A":

Revisions:

Original Report Date: 3/15/00

TOWN OF DAVIE
Development Services Department
Planning & Zoning Division Staff
Report and Recommendation

APPLICANT INFORMATION

Owner:

Name: Griffin-Orange North, Inc.
City: Pembroke Pines, FL 33024
Address: 9000 Sheridan Street
Phone: (954) 431-7111

Agent:

Name: Howard J. Zimmerman
City: Pembroke Pines, FL 33024
Address: 9000 Sheridan Street
Phone: (954) 431-7111

BACKGROUND INFORMATION

Application Request: To rezone 33.81 acres of property from A-1, Agricultural District to B-3, Planned Business Center District.

Address/Location: General Address - 14501 Orange Drive/Generally located at the northwest corner of Orange Drive and SW 142nd Avenue.

Land Use Plan Designation: Commercial

Zoning: A-1, Agricultural District

Existing Use: Vacant land.

Proposed Zoning: B-3, Planned Business Center District

Proposed Use: Commercial retail and office.

Parcel Size: 33.81 acres (1,472,764 square feet)

Surrounding Land Use:

North: Broward County Landfill
South: Single Family Homes within Cooper City.
East: Single Family, across SW 142nd Avenue
West: Vacant land,

Land Use Designation:

Recreation and Open Space
Residential .40 du/ac
Residential 1 du/ac
Commercial

Surrounding Zoning:

North: RS, Recreation and Open Space District
South: E, Estate District, within Cooper City.
East: E, Estate District
West: A-1, Agricultural District

ZONING HISTORY

Related Zoning History:

- In 1995, the "Imagination Farms Settlement Agreement" was approved.
- Also on this agenda, the petitioner is requesting the adjacent 27.24 acres to the west be rezoned from A-1 to B-3, under application number ZB 1-4-00.

Previous Requests on same property: None.

DEVELOPMENT PLAN DETAILS

Conceptual Master Plan:

- The conceptual master plan provided by the petitioner indicates a total of five buildings are proposed for this site, along with a South Florida Water Management tower located at the northeast corner of the site adjacent to the residential land to the east. Specific information regarding the types of uses to occupy the buildings, square footage, and access points have not been provided on the plan. Staff has discussed these issues with the applicant who has indicated the buildings will be used for retail uses and that access will occur via Orange Drive, however, site design and building design is in the preliminary stages and specific building square footage and circulation patterns may vary (see attached conceptual Master Plan).
-

Applicable Codes and Ordinances

Land Development Code Section 12-307, Review for Rezonings.

Land Development Code Section, 12-34(AA)(1), which requires unified control and a conceptual master plan for development of land within the B-3, Planned Business Center District.

Comprehensive Plan Considerations

Planning Area: The subject site falls within Planning Area 2. This area includes the

westernmost section of the Town north of Orange Drive and south of SW 14th Street, and bound on the west by Interstate 75 and on the east by Flamingo Road. The predominant existing and planned land use is single family residential at a density of one dwelling unit per acre. The Broward County Land Fill site, now closed, is programmed for redevelopment as a park site. The Boy Scout Camp is located to the north of the landfill site and is also used for recreational and open space purposes.

- This development is consistent with the existing "Commercial" land use designation.

Broward County Land Use Plan:

- The subject site falls within Flexibility Zone 113.
- The petitioner will be required to obtain Plat approval by the Town of Davie and Broward County prior to site plan approval. Concurrency review pertaining to roadways and utilities infrastructure will occur at the time of platting.

Concurrency Considerations:

- According to the Broward County Compact Deferral Map, the subject site lies within a compact deferral area. The petitioner will be required to mitigate for the impact of the development to those affected overcapacity links at the time of platting.
- Orange Drive, west of Flamingo Road, is currently operating at a level of service (LOS) "A", with "A" being the optimum operation condition.
- Griffin Road, east of I-75, is currently operating at a LOS "A".
- Shotgun Road (154 Avenue), is currently operating at a LOS "A".
- There is no information available relating to the current and projected traffic volumes for SW 142 Avenue, nor is it monitored by Broward County. However, the Town of Davie Comprehensive Plan indicates Shotgun Road, just west of SW 142 Avenue, is operating at a LOS "A" which may indicate that SW 142 Avenue is also operating at a high level of service.
- The petitioner has not provided specific building square footage information on the conceptual plan, therefore, staff is unable to calculate the exact projected LOS of Shotgun Road, Orange Drive and SW 142nd Avenue and Griffin Road may be if the proposed development is approved. However, when applying a realistic building coverage ratio of 17% for this site and the adjacent property being petitioned for B-3 zoning under application ZB 1-4-00 to the Broward County trips rate information, staff can determine that approximately 10,000 to 13,000 trips per day will be generated by each development. The resulting Level of Service would be below Level of Service "D" adopted by the Town.

The petitioner acknowledges that improvements are necessary to Orange Drive to accommodate the projected site traffic, and is proposing to expand the roadway from two lanes to four lanes between SW 142 Avenue (Boy Scout Road) and SW 154 Street (Shotgun Road). The petitioner is also proposing a bridge across the new river canal connecting Orange Drive to Griffin Road, approximately 650 feet west of SW 142 Avenue (Boy Scout Road). Specific information on the amount of capacity this would create has not been provided by the petitioner.

Applicable Goals, Objectives & Policies:

Future Land Use Policy 7-1: The Town shall endeavor to expand its economic base through expansion of the commercial sector of its economy.

Future Land Use Policy 7-3: Zoning regulations shall provide for varying intensities of commercial development, and direct application of appropriate districts where compatible with adjacent and surrounding residential uses.

Future Land Use Policy 7-4: Commercial land uses shall generally be located with access to primary transportation facilities including interstates, highways and arterials. Commercial uses located on arterial not designated by the Future Land Use Plan map as commercial corridors should be limited to the intersection of two arterial or arterial and interstates. Consistent with Policy 7-1, vacant land with such access shall be evaluated for potential commercial use.

Staff Analysis

The approval of the 1995 annexation agreement anticipated this site would be rezoned to the B-3 District consistent with the existing "Commercial" land use designation. Therefore, the petitioner is requesting to rezone the subject property to the B-3, Planned Business Center District. The petitioner has also voluntarily offered to restrict the more intense uses permitted within the B-3 zoning district should this rezoning be approved (see attached list of uses to be restricted).

As indicated on the conceptual master plan, the petitioner has designed the site to locate four of the five buildings away from the adjacent residential land to the east. The remaining building (smallest in size), will be located towards the intersection of Orange Drive and SW 142 Avenue to limit the impact of buildings to the adjacent future homes. Also, a South Florida Water Management District tower will be located on the north side of this building to further reduce the impact of any buildings to the abutting property. Staff believes that access should be limited only to Orange Drive to further reduce the impact to the abutting residential land. This would limit commercial traffic on SW 142 Street which provides access to existing and future homes to the northeast. All other properties to the north, west and south are buffered by similar or less intense land uses.

The Transportation Element of the Town's Comprehensive Plan indicates that Griffin Road, Shotgun Road and Orange Drive are currently operating at a Level of Service "A". Although, there is no available information for capacity on SW 142

Avenue, the undeveloped land in the area suggests SW 142 Avenue is operating at a high level of service.

As noted above, this development and the adjacent property requesting rezoning (ZB 1-4-00) may increase traffic between 10,000 and 13,000 trips per day each, resulting in a Level of Service below the adopted Level of Service "D" by the Town. The petitioner acknowledges that improvements are necessary to Orange Drive to accommodate the projected site traffic, and is proposing to expand the roadway from two lanes to four lanes between SW 142 Avenue (Boy Scout Road) and SW 154 Street (Shotgun Road). The petitioner is also proposing a bridge across the new river canal connecting Orange Drive to Griffin Road, approximately 650 feet west of SW 142 Avenue (Boy Scout Road). Specific information on the amount of capacity this would create has not been provided by the petitioner.

The petitioner has also offered to enter into a "Developer's Agreement" with the Town of Davie to ensure that all affected roadways will meet a Level of Service of "D" or better, prior to the issuance of any building permits. The petitioner is also required to satisfy Broward County concurrency review at the time of platting for roadways. Based on this information, staff believes the proposed rezoning is consistent with the Town's Future Land Use Plan Policies and that sufficient capacity will be available at the time of development.

Therefore, staff believes this location is the most logical site for the proposed B-3 District located adjacent to a major Interstate, is consistent with the Town's Comprehensive Plan Policies, is consistent with the approved annexation agreement and will not be harmful to the public welfare.

Findings of Fact

Section 12-307(A)(1):

- (a) The proposed change is not contrary to the adopted comprehensive plan, as amended, or any element or portion thereof;
- (b) The proposed change will not create an isolated zoning district unrelated and incompatible with adjacent and nearby districts;
- (c) Existing zoning district boundaries are logically drawn in relation to existing conditions on the property proposed for change;
- (d) The proposed change will not adversely affect living conditions in the neighborhood, based on the information provided ;
- (e) The proposed change will not create or excessively increase automobile and vehicular traffic congestion above that which would be anticipated with permitted intensities or densities of the underlying land use plan designation, or otherwise affect public safety, based on the information provided;
- (f) The proposed change will not adversely affect other property values;

- (g) The proposed change will not be a deterrent to the improvement or development of other property in accord with existing regulations, based on the information provided;
 - (h) The proposed change does not constitute a grant of special privilege to an individual owner as contrasted with the welfare of the general public;
 - (i) There are substantial reasons why the property cannot be used in accord with existing zoning due to the existing commercial land designation.
 - (j) The proposed zoning designation is the most appropriate designation to enhance the Town's tax base given the site location relative to the pattern of land use designations established on the future land use plan map, appropriate land use planning practice, and comprehensive plan policies directing land use location.
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Staff Recommendation

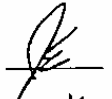
Recommendation: Based upon the above and the overall finding of facts in the positive, staff recommends approval of application no. ZB 1-3-00, subject to the "Developer's Agreement" offered by the petitioner as noted in the planning report, the voluntary "Declaration of Restrictions", and the conceptual master plan attached hereto.

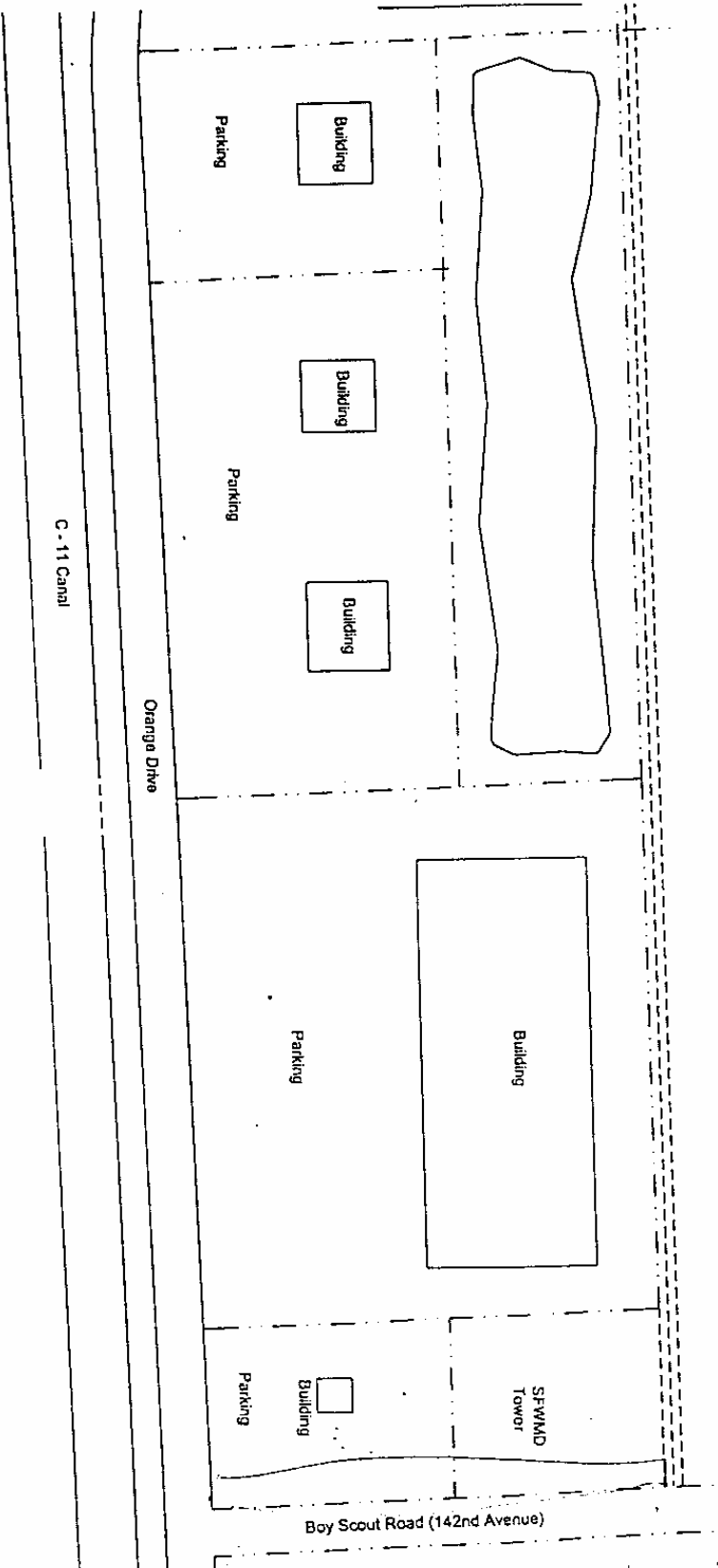
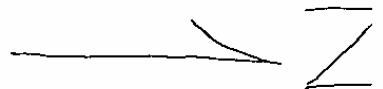
Exhibits

1. Conceptual Master Plan
2. List of permitted uses within the B-3 District
3. Land Use Map
4. Subject Site Map
5. Aerial

Prepared by: _____

Reviewed by: _____


SMC



(B) COMMERCIAL, OFFICE AND BUSINESS DISTRICTS

GENERAL USE

DISTRICTS

	SC & B-1	WT & B-2	UC & B-3	O	FB	CC	CI	RO
Adult Facilities	N	N	*	N	N	N	N	N
Agriculture	*	*	*	*	N	*	N	*
Agriculture, Commercial	*	*	*	*	*	*	*	*
Amusement Parks	N	N	N	N	N	N	N	N
Animal Hospital	P	P	P	N	N	N	P	N
Animal Kennel	N	N	N	N	N	N	P	N
Antique, Crafts Shops	P	P	P	N	N	N	N	N
Athletic/Health Clubs, Gyms	N	P	P	N	P	*	P	N
Art Gallery	P	P	P	P	P	N	N	N
Auction House	N	*	*	N	N	N	*	N
Banks, Financial	P	P	P	P	P	P	N	N
Bakery, Delicatessen	P	P	P	N	P	*	P	N
Barber, Beauty Shops	P	P	P	N	P	*	P	N
Bars, Lounges	N	*	*	N	*	*	*	N
Bingo Establishments	N	1	1	N	N	N	*	N
Boat Yards	N	N	N	N	N	N	P	N
Bookstores, Newsstand	P	P	P	N	P	**	P	N
Botanical Gardens	N	N	N	N	P	N	P	N
Bottled Fuel	N	N	N	N	N	N	P	N
Bowling, Skating	N	P	P	N	N	N	P	N
Cabinet/Carpentry Shops	N	N	N	N	N	N	*	N
Car Wash	N	P	P	N	N	N	P	N
Catering (Food)	N	P	P	N	N	P	P	N
Communication Apparatus	*	*	*	*	*	*	*	*
Contractor, office only	P	P	P	P	N	P	P	P
Convenience Stores	P	P	P	N	*	N	P	N
Dance Halls, Clubs	N	P	P	N	P	N	P	N
Distribution Facilities	N	N	N	N	N	N	P	N
Dry Cleaning	*	*	*	N	N	**	P	N
Florist, Plant Shop	P	P	P	N	P	**	P	N
Game Room, Arcade	N	P	P	N	N	N	P	N
Gardeners, Landscape Contractors	N	N	N	N	N	N	P	N
Gift Shops	P	P	P	N	N	**	P	N
Golf Courses	N	P	P	N	P	N	N	N
Home Occupation	N	N	N	N	N	N	N	P
Hotels, Motels	N	N	*	N	P	*	N	N
Laboratories	N	N	N	P	P	P	P	N
Light Fabrication	N	N	N	P	N	P	P	N
Machine Shop	N	N	N	N	N	N	P	N

(B) COMMERCIAL, OFFICE AND BUSINESS DISTRICTS
GENERAL USE

DISTRICTS

	SC & B-1	WT & B-2	UC & B-3	O	FB	CC	CI	RO
Medical Clinic, Doctor's Office	N	P	P	N	N	P	N	N
Mini Warehouse/Self Storage	N	N	N	N	N	*	*	N
Mobile Home Sales	N	*	*	N	N	N	P	N
Mortuary	N	P	P	N	N	N	P	N
Motion Picture Studio	N	N	N	N	N	P	*	N
Motor Fuel Pumps	N	*	*	N	*	N	*	N
Movie Theater, Performing Arts	N	P	P	N	P	N	*	N
Night Clubs	N	*	*	N	*	*	*	N
Nursery, Child Care Facility	*	*	*	N	*	*	N	N
Office	P	P	P	P	P	P	P	P
Office Equipment Sales	N	P	P	N	P	*	P	N
Parking Lot, Rental	N	P	P	N	*	N	N	N
Pawnshop	N	P	P	N	N	N	P	N
Personal Services	P	P	P	N	P	*	*	N
Pharmacy	N	P	P	N	P	*	*	N
Photographic Studio	P	P	P	N	P	P	*	N
Plant Nursery	P	P	P	P	P	N	P	N
Pool Rooms	N	P	P	N	N	N	P	N
Printer	N	P	P	N	P	P	P	N
Private Club	N	N	P	N	P	N	N	N
Radio or TV Station	N	N	N	N	N	P	P	N
Real Estate Office	P	P	P	P	*	P	P	N
Repair Shop, except vehicle or boat repair	N	P	P	N	N	N	P	N
Research Facilities	N	N	N	P	P	P	*	N
Residential Uses	*	N	*	N	*	*	*	*
Restaurants, Fast Food	N	P	P	N	P	N	*	N
Restaurant, Other	*	P	P	N	P	*	*	N
Retail Sales Other	P	P	P	N	P	*	*	N
Sales Office	P	P	P	P	P	P	P	N
Schools—Special, Private	N	*	*	*	*	N	N	N
Schools, Trade, Vocational and Other	N	*	*	*	*	N	*	N
Service Stations	N	N	N	N	N	N	N	N
Sheet Metal Shop	N	N	N	N	N	N	N	N
Special Residential Facilities	*	*	*	N	N	N	N	N
Sports Arena	N	N	N	N	N	N	N	N
Studios (Art, Music)	P	P	P	N	N	P	P	N
Truck, Auto, Trailer, Utility Rental	N	N	P	N	N	N	P	N
Vehicle Customizing	N	N	N	N	N	N	N	N
Vehicle, Boat, Truck, Repair Major	N	N	N	N	N	N	N	N
Vehicle Repair, Minor	N	*	*	N	N	N	N	N
Vehicle Towing	N	N	N	N	N	N	N	N
Vehicle Boat, Truck Sales	N	N	*	N	*	*	*	N
Warehouse, Storage	N	N	*	N	*	*	*	N

(B) COMMERCIAL, OFFICE AND BUSINESS DISTRICTS (continued)

GENERAL USE

DISTRICTS

	SC & B-1	WT & B-2	UC & B-3	O	FB	CC	CI	RO
Watchman's Apartment	N	N	N	N	N	N	N	N
Wholesale	N	P	P	N	N	P	P	N

P = Permitted by right in this district.

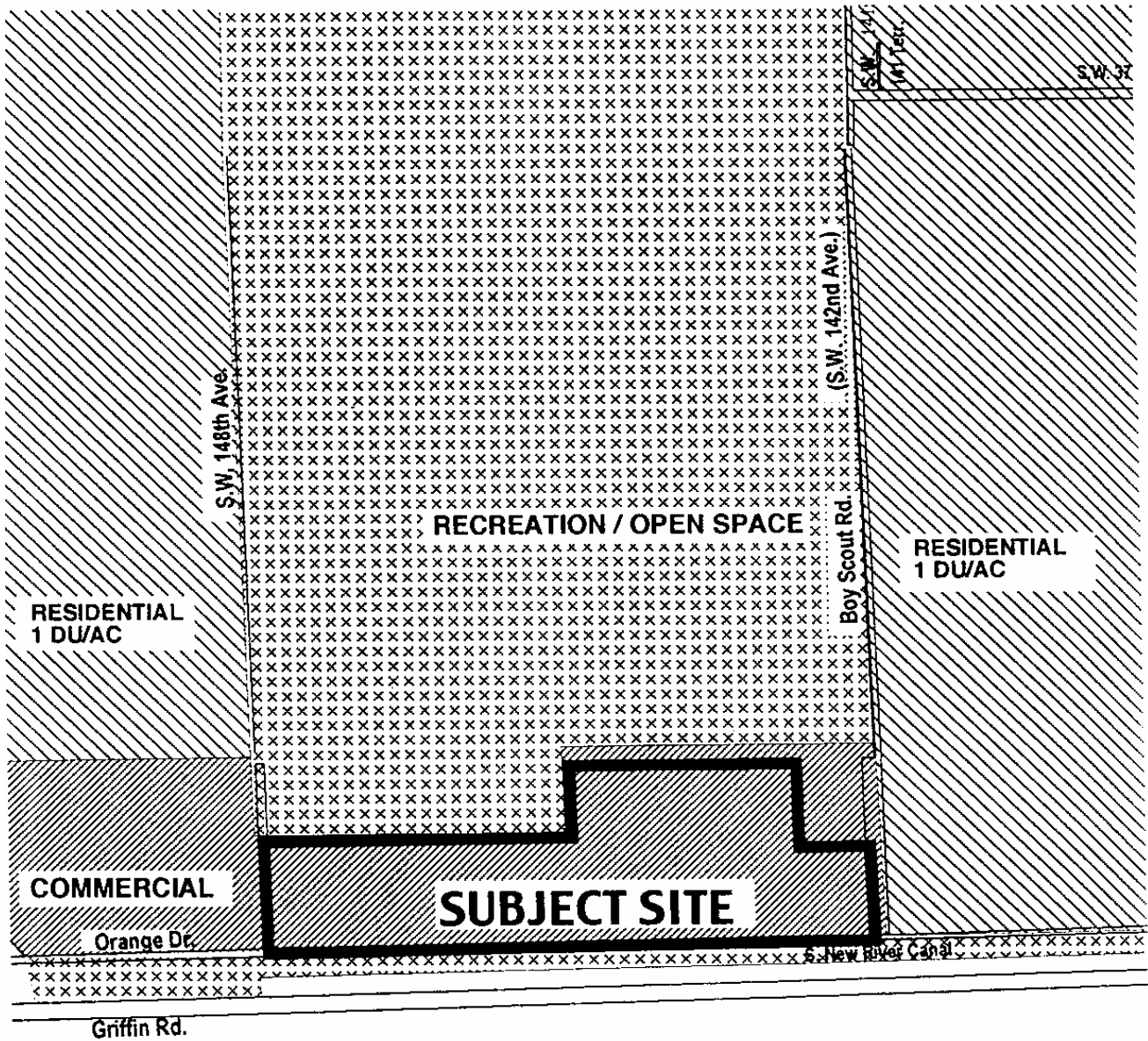
N = Not permitted in this district.

* = Conditionally permitted subject to detailed use regulations (Section 12-34).

1 = Subject to detailed use regulations of Chapter 13, Article V of Davie Code of Ordinances.

** = Limited to 20% of gross floor area

Permitted uses, specified under each zoning district, are intended to express the intent and purpose of that district. All uses are subject to General Regulations, Section 12-33 and Detailed Use Regulations, Section 12-34 of this Article.



PETITION NUMBER		N
ZB 1-3-00		4
Subject Site Area		
Future Land Use Plan		
PREPARED 3/16/00	Scale: 1"=600'	
BY THE PLANNING & ZONING DIVISION		

LAW OFFICES

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DAVID M. SCHWEIGER
CHRISTOPHER L. SMITH

*BOARD CERTIFIED
CIVIL TRIAL LAWYERS

September 27, 2002

Mr. Mark Kutney
Director of Development Services
Town of Davie
6591 Orange Drive
Davie, FL 33314-3399

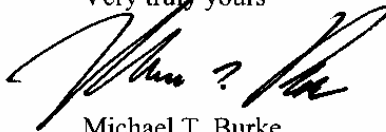
Re: Griffin-Orange North, Inc. and Seventy-Five East, Inc.
Rezoning Applications

Dear Mr. Kutney:

Enclosed please find the Town Council Agenda Report which I have prepared in connection with the above-referenced matter. I have also enclosed a copy of the Final Order and Judgment Granting Petition for Writ of Common law Certiorari, the Town Council Agenda Reports submitted in connection with the June 7, 2000 quasi judicial hearing, a supplemental staff analysis dated June 2, 2000 and the transcript of the June 7, 2000 quasi judicial hearing. Since the Town Council will be required to base its decision on the evidence presented at the June 7, 2000 hearing, I thought it would be important to include this information in the backup materials, particularly for those persons who were not members of the Town Council at the time of the prior hearing.

Please do not hesitate to let me know if you have any questions concerning the above or the enclosures contained herein. In addition, please do not hesitate to let me know if I can provide you with any additional assistance concerning this matter. I will, of course, be in attendance at the October 2, 2002 Town Council meeting.

Very truly yours



Michael T. Burke
For the Firm

MTB/lt
Enclosures

Pension
at 2:15
Dm

DEVELOPMENT SERVICES DEPARTMENT
Planning & Zoning Division

MEMORANDUM
PZ

TO: Robert Middaugh, Town Administrator

FROM: Mark A. Kutney, AICP, Development Services Director *MAK*

DATE: June 2, 2000

RE: Supplemental Staff Analysis; Imagination Farms Rezoning/ZB 1-3-00 and ZB 1-4-00

Indicated below is a brief summary of the events that have transpired since the submittal of these rezoning applications.

On February 23, 2000, Howard Zimmerman submitted two separate rezoning petitions ZB 1-3-00 (33.81 acres) and ZB 1-4-00 (27.24 acres) in order to change the zoning from A-1, Agricultural District to B-3, Planned Business Center District, consistent with the existing commercial land use plan designation.

Staff initially reviewed the application predicated upon rezoning criteria with the understanding that traffic concurrency measures would be addressed at the time of platting. Subsequently during review it was agreed with the petitioner to address certain roadway improvements which would serve to satisfy concurrency requirements necessary to maintain minimum level of service standards. Staff had then requested as a condition of approval, the submission of a Developer's Agreement providing for construction of all roadway improvements necessary to maintain required operating conditions.

On March 22, 2000, the Planning and Zoning Board recommended approval subject to the Developer's Agreement, the declaration of restrictions and the conceptual master plan. On April 5, 2000, this item was presented to the Town Council. At this meeting, the Town Administrator recommended that a comprehensive traffic analysis be provided to address additional impacts attributed to the residential property to the north also under control of the petitioner. The Town Council directed the petitioner to prepare this analysis and further to present this information to the Planning & Zoning Board to afford further public input. This matter was tabled to the meeting of June 7, 2000 to afford these actions.

On May 24, 2000, the petitioner presented this analysis to the Planning and Zoning Board. The Board reviewed this information, solicited public testimony and took this information under advisement with no further action taken. The following excerpted comments provided are representative of the public input.

- Plan is not being presented in its entirety.
- Major concern is traffic heading east from Shotgun Road on to Orange Drive.
- Widening of Orange Drive will increase danger for horse and pedestrian traffic.
- Property values will decrease while crime will increase.
- The proposed development is an accident waiting to happen.
- Came from Miami and does not want to see this in Davie.
- Came from New Jersey to get some elbow room. Totally against this.

- Already have trouble going east on Orange Drive from exiting home in the area. Believes this development and the proposed improvements would make it worse.
- According to the traffic study there are so many home based trips, shopping based trip and non-home based trips which create a certain amount of total trips, based on a 24-hour period. However, if the proposed retail is not a 24-hour retail store and closes at 8:00 p.m., then the total trips will occur in a 12 hour period and not a 24 hour period. This would double the cars.
- Wants to see small retail and not big box retail in this area. Make it retail which serves the community and not the region.
- Does not want to see a warehouse on this site.
- If Orange Drive is widened in this area, what is going to stop it from being widened all the way to Flamingo Road, or even further.
- Their salesman said there would be no commercial in this area.
- The public is looking to the P & Z and the Council to put the residents first and defend their safety and quality of life.
- Believes traffic study is inaccurate.

II. Staff Review of the Traffic Analysis

The petitioner provided a traffic analysis based upon the Broward County "TRIPS" Model for concurrency review. This analysis was based upon development of a 342 unit single family home development together with a 560,000 square foot commercial development with access provided from Orange Drive. The Broward County "TRIPS" Model applies both existing traffic and "committed traffic" to the roadway network in analyzing the level of service impact of proposed development. Based upon this background traffic data and the trips associated with the applicant's proposed development, the "TRIPS" Model identified several roadway segments which would operate at an unacceptable level of service "E" or "F".

The analysis shows 30,701 daily trips generated by the proposed development and further identifies proposed capacity improvement projects to address these impacts. The proposed improvements include additional laneage on Griffin Road and Orange Drive with turn lane improvements at surrounding intersections. The analysis further identifies potential capital improvement strategies to address these construction obligations. Resolution of appropriate improvements, construction timing and financial commitments shall be incorporated within the required Developer's Agreement.

III. Summary

The trips analysis indicates a trips generation and distribution for the proposed development not inconsistent with that which would be anticipated from development under the existing land use category, (currently designated commercial). The Town of Davie Land Development Code, Section 12-307 (A)(1) provides criteria for the evaluation of rezoning applications in consideration of Land Use/Rezoning consistency. Finding of Fact criterion 5 provides, "The proposed change will not create or excessively increase automobile and vehicular traffic congestion above that which would be anticipated with permitted intensities or densities of the underlying land use plan designation, or otherwise affect public safety, based on the information provided". Therefore inconsideration of these findings and the other findings of fact in the affirmative staff recommended approval of these rezoning applications subject to execution of an acceptable Developer's Agreement.

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Council members

FROM/PHONE: Michael T. Burke, Special Counsel – 954/463-0100

SUBJECT: Griffin/Orange and Seventy-Five East rezoning ordinances

Report in brief:

These rezoning applications have been remanded to the Town Council for further proceedings by the Circuit Court. A copy of Circuit Judge Patricia Cocalis' March 18, 2002 Final Order and Judgment Granting Petition for Writ of Common law Certiorari is attached hereto.

The rezoning applications involve two vacant and adjacent parcels located on the north side of Orange Drive and commonly referred to as Griffin/Orange North (33.811 acres) and Seventy-Five East (27.235 acres). Both parcels were designated for commercial use in the mid 1990s under the Broward County and Town of Davie Comprehensive Plans. In January 2000, applications were filed to change the zoning designation of the parcels from an agricultural use (A-1) to a commercial use (B-3).

The rezoning applications were reviewed by the Town's Development Services Department and on March 22, 2000, the Planning and Zoning Board (4-1) recommended approval of the applications subject to the applicant's execution of a development agreement and declaration of restrictive covenants. Thereafter, the Development Services Department submitted a report which recommended approval of the applications subject to the same conditions suggested by the Town's Planning and Zoning Board.

On June 7, 2000, the Davie Town Council conducted a quasi judicial hearing on the applications. Evidence was presented by Town Administrator Robert Middaugh, Development Services Director Mark Kutney, applicant's attorney Dennis Mele, applicant representative Howard Zimmerman and Town residents or other interested persons Mike Bender, Mr. Boscae, Linda Boscae, Jose Pujols, Dean Alexander, Lou Freedman, Earl Weis, Jefferson Weaver, Michael Williams, Israel Sanchez, Charles Freeman, Carrie Waldie, Kevin Codswal, Jim Annan, Curt Coburg, and Jay Staller. Copies of the Town Council Agenda Reports and supplemental staff analysis prepared by the Development Services Department and submitted as evidence at the June 7, 2000 hearing are

attached hereto. In addition, a copy of the transcript of the June 7, 2000 quasi judicial hearing is also attached hereto.

Following the presentation of evidence at the June 7, 2000 quasi judicial hearing, the Town Council unanimously denied both rezoning applications. Thereafter, the applicants appealed the Town Council's denial to the Circuit Court. Briefs in opposition to the appeal were filed and following a lengthy oral argument, Circuit Judge Patricia Cocalis ruled in pertinent part as follows:

The Court concludes from the record that petitioners met all legal requirements for approval of their rezoning applications from A-1 to B-3 and that the record fails to establish substantial competent evidence to support the Town Council's denial of the applications. Accordingly, the Town Council's denial of the applications failed to follow the essential requirements of law.

The Town Council's denial of petitioners' applications for rezoning to B-3 is hereby QUASHED. This matter is REMANDED to the Town Council for actions consistent with this Court's opinion, as this Court finds and orders that:

(1) Petitioners met all objective criteria established by the City's Land Development Code, (2) the zoning applications are consistent with the Town's Comprehensive Plan, and (3) the zoning applications complied with all procedural requirements of the Town's Zoning and Land Development Code requirements.

The Town of Davie appealed and requested that Florida's Fourth District Court of Appeal quash the Circuit Court's Order. The Fourth District Court of Appeal denied the Town's request. As such, the matter is now before the Town Council for further proceedings consistent with the Circuit Court's opinion.

The Davie Town Council is required to review and render a decision on the applications based on the testimony and other evidence presented at the June 7, 2000 quasi judicial hearing. The Town Council is also bound by the Circuit Court's findings

that the applications are consistent with the Comprehensive Plan and meet the requirements for approval. Section 12-307(B)(1) of the Davie Land Development Code provides as follows:

The Council shall establish a public hearing to consider the rezoning review criteria in Subsection (A), above, public testimony and the Planning and Zoning Board recommendation and may act on the petition, deny, deny without prejudice, approve or approve with conditions, or approve an amended application for rezoning.

Since rezoning applications are required to be approved by ordinance and since rezoning ordinances require a first and second reading, the applications have been placed on the Town Council's October 2 and October 16, 2002 meeting agendas.

IN THE CIRCUIT COURT IN AND FOR
THE 17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA
CASE NO. 00-011228 CACE 04
(Consolidated with Case No. 00-011230)

GRIFFIN-ORANGE NORTH, INC.

Petitioner/Plaintiff,

vs.

TOWN OF DAVIE, a political subdivision of
the State of Florida,

Respondent/Defendant,

SEVENTY-FIVE EAST, INC.,

Petitioner/Plaintiff,

vs.

TOWN OF DAVIE, a political subdivision of
the State of Florida,

Respondent/Defendant.

**FINAL ORDER AND JUDGMENT GRANTING PETITION
FOR WRIT OF COMMON LAW CERTIORARI**

THIS MATTER came before the Court on oral argument and final hearing on August 16, 2001, on Petitioners GRIFFIN-ORANGE NORTH, INC.'s and SEVENTY-FIVE EAST, INC.'s (collectively "Petitioners") Petition(s) for Writ of Common Law Certiorari and Amendment and Supplement to Petition for Writ of Common Law Certiorari against Respondent TOWN OF DAVIE, a political subdivision of the State of Florida ("Town"); the Town's Response(s) to the Petition and Amendment and Supplement to Petition; and Petitioners' Reply(s) to the Town's Response(s) (collectively herein the "Action"). Petitioners' Action results from the Town Council's denial of

Petitioners' separate rezoning Applications to the Town of Davie for a change in zoning from A-1 to B-3, respectively Application, ZB 1-3-00, (filed by Griffin-Orange North, Inc.) (App. 1) and Application, ZB 1-4-00, (filed by Seventy-Five East, Inc.) (App. 2 and 2A). The Town, by final action, denied the rezoning Applications on June 7, 2000. Although the items were separately voted on by the Town Council, they were concurrently considered and discussed at the time of quasi-judicial public hearing (June 7, 2000) and the evidence presented was by stipulation as to both Applications. The Action was timely brought by Petitioners and this Court has jurisdiction of the subject matter and parties. The cases were consolidated by Court Order, dated November 20, 2000, consolidating Case No. 00-011228-CACE-04 with Case No. 00-011230-CACE-25.

FINDINGS OF FACT AND LAW

The Court's standard of review in this certiorari proceeding is to determine: (1) whether due process was afforded; (2) whether the essential elements of law were observed; and (3) whether competent substantial evidence supported the Town Council's actions. *See Florida Power & Light Co. v. City of Dania*, 761 So. 2d 1089 (Fla. 2000); *Dusseau v. Metropolitan Dade County Bd. of County Comm'rs, et al*, 794 So. 2d 1270 (Fla. 2001); and *Broward County v. G.B.V. Int'l Ltd.*, 787 So. 2d 838 (Fla. 2001). This Court has jurisdiction to issue a Writ of Common Law Certiorari pursuant to Article V, Section 5(b), *Florida Constitution*; *Florida Rules of Appellate Procedure*, Rule 9.030(c)(3), and *Florida Rules of Civil Procedure*, Rule 1.630. This Court was required to review the Town's actions under a strict scrutiny standard. *See Board of County Comm'rs of Brevard County v. Snyder*, 627 So. 2d 469 (Fla. 1993).

If this Court deems that the Town's actions were improper under the applicable review standards, this Court has the authority to quash the Town Council's denial of the Applications and

remand the matter to the Town Council. See, e.g., *Broward County v. G.B.V. Int'l Ltd.*, 787 So. 2d 838 (Fla. 2001); *Dusseau*, 794 So. 2d at 1270 *et seq.*; *Parker Family Trust v. City of Jacksonville*, 2001 WL 1598368, 26 Fla. L. Weekly D2968 (Fla. 1st DCA Dec. 17, 2001); *Tamiami Trail Tours, Inc. v. Railroad Comm'n*, 174 So. 451 (Fla. 1937).

The Court's review of this matter was based on the Record before the Court, as heard and considered by the Town Council. The Record includes Petitioners' Appendix, Petitioners' Amended and Corrected Exhibits to the Appendix, and Petitioners' Supplemental Exhibits to the Appendix.

The Court, having reviewed the Record, heard argument of counsel, and having been otherwise duly advised finds, in accordance with the standard for review of the Town Council's actions, that the Town Council's denial of the Petitioners' Applications for rezoning is not supported by substantial competent evidence and that, in denying the Applications, the Town Council failed to follow the essential requirements of law. This Court finds that, based on the Record and the Zoning Applications, Petitioners met all lawful requirements for rezoning from the Town's A-1 zoning classification to a B-3 zoning classification. Specifically, this Court finds that the Petitioners demonstrated, through the evidence and the testimony presented to the Town Council, including testimony presented by the Town's Staff at the hearing (as the "city's experts" (TR 12) (App. 17)), that the proposed rezoning to B-3 met all the objective standards for approval as provided by the Town's Land Development Code (App. 4). The Town's action denying the Petitioners' Zoning Applications was not supported by substantial competent evidence in the Record.

The Record includes the Town's Staff Report. The Town's Staff Report (prepared by the Town's Development Services Department's Planning and Zoning Division) (App. 7 and 8) and the Town Staff's testimony recommended approval of both applications. The Town Staff Report

specifically states that:

- (a) The proposed change is not contrary to the adopted comprehensive plan, as amended, or any element or portion thereof;

* * *

- (e) The proposed change will not create or excessively increase automobile and vehicular traffic congestion above that which would be anticipated with permitted intensities or densities of the underlying land use plan designation, or otherwise affect public safety, based on the information provided;

* * *

- (i) There are substantial reasons why the property cannot be used in accord with existing zoning due to the existing commercial land designation;
- (j) The proposed zoning designation is the most appropriate designation to enhance the Town's tax based given the site location . . .

See Staff Report (App. 7 and 8). The evidence and testimony, including staff testimony, findings, and recommendations, established that the Zoning Applications are consistent and compatible with the criteria and standards of the Town's Land Development Code, specifically Section 12-307 and 12-34 (AA)(1). Moreover, as evidenced by the Staff Report, Staff specifically found the Applications to be in conformance and consistent with the Town Land Use Plan (App. 5), Broward County Land Use Plan (App. 6), and the Town Land Development Code (App. 4), including, Section 12-307, entitled "Review for Rezonings." This finding is also supported by the recommendation of approval of the Applications by the Town's Planning and Zoning Board, following its review of the Applications (App. 10 and 11).

This Court also finds that the Record, including the evidence and testimony, shows that the Petitioners complied with the Settlement Agreement in the Imagination Farms litigation, Broward County Circuit Court Case No. 95-007822 (04), which was also part of the Record before the Town

Council (App. 14), in making their Applications. This is evidenced by the Applications (App. 1, 2 and 2A), the Settlement Agreement (App. 14), and other portions of the Record, including the comments of Robert Middaugh, Town Administrator, who stated that “. . . the development proposal that you will see here tonight or that’s the subject tonight is precisely as was anticipated in that original 1995 Agreement” (TR 6, App. 17). Mark Kutney, the Town’s development services director, also testified at the hearing before the Town Council that “the approval of the 1995 annexation agreement anticipated this site would be rezoned to a B-3 district consistent with the existing commercial land use designation” (TR 25, App. 17). The Record also shows that the Petitioners’ Applications (App. 1, 2 and 2A) were likewise consistent with previous applications submitted by third parties pursuant to the 1995 Settlement Agreement (App. 14), including, but not limited to the rezoning request from A-1 to B-3 by Golden Pond Development Corporation (App. 21), which was approved by the Town in March 1996.

Based on the showing by Petitioners through the evidence and testimony presented, including the Town’s Staff Report and Staff recommendations, the burden shifted to the Town to establish by substantial competent evidence that the proposed rezoning did not comply with the applicable, objective standards of the Town Land Development Code. *See DeGroot v. Sheffield*, 95 So. 2d 912 (Fla. 1958) (holding that substantial evidence is evidence that establishes a substantial basis of fact from which the fact at issue can be reasonably inferred and such relevant evidence as a reasonable mind would accept as adequate to support the conclusion reached). In *GBV Int’l, Ltd.*, the court stated:

A decision granting or denying a site plan or plat application is governed by local regulations, which must be uniformly administered. The allocation of burdens expressed in Irvine v. Duval County Planning Commission, 495 So. 2d 167 (Fla.

1986), is applicable to such proceedings:

[O]nce the petitioner met the initial burden of showing that his application met the statutory criteria for granting such [applications], "the burden was upon the Planning Commission to demonstrate, by competent substantial evidence presented at the hearing and made a part of the record, that the [application] requested by petitioner did not meet such standards and was, in fact, adverse to the public interest."

Irvine, 495 So. 2d at 167. To deny a plat application, a local government agency must show by competent substantial evidence that the application does not meet the published criteria.

787 So. 2d at 842 (citing *Irvine v. Duval County Planning Comm'n*, 495 So. 2d 167 (Fla. 1986));.

The Town failed to meet this burden.

The Record reflects that the Town Council, by its denial of the Application(s) failed to follow the essential requirements of law. The Florida Supreme Court has held that "apply[ing] the correct law" is synonymous with "observing the essential requirements of law." *Haines City Community Dev. v. Heggs*, 658 So. 2d 523, 527-30 (Fla. 1995). The Town Council was required to apply specific, objective, zoning criteria and standards as set out in the Town's Land Development Code, including, specifically §12-307 and §12-34(AA)(1) (App. 4). See *City of Naples v. Central Plaza of Naples, Inc.*, 303 So. 2d 423 (Fla. 2nd DCA 1974).

In *Park of Commerce*, the Court stated that:

Property owners are entitled to notice of the conditions they must meet in order to improve their property in accord with the existing zoning and other development regulations of the government. These conditions should be set out in clearly stated regulations. Compliance with these regulations should be capable of objective determination in an administrative proceeding. While the burden may be on the property owner to demonstrate compliance, no legislative discretion is involved in resolving the issue of compliance."

Park of Commerce Assocs. v. City of Delray Beach, 606 So. 2d 633, 635 (Fla. 4th DCA 1992); see

also *Debes v. City of Key West*, 690 So. 2d 700 (Fla. 3rd DCA 1997). In *Debes*, the court stated that:

A property owner is entitled to have his property properly zoned based on proper zoning concepts without regard to the one particular use which the owner might then intend to make of the various uses permitted under a proper zoning classification. A zoning authority's insistence on considering the owner's specific use of a parcel of land constitutes not zoning but direct governmental control of the actual use of each parcel of land which is inconsistent with constitutionally guaranteed private property rights.

690 So. 2d at 702 (*quoting Porpoise Point Partnership v. St. John's County*, 470 So. 2d 850, 851 (Fla. 5th DCA 1985)).

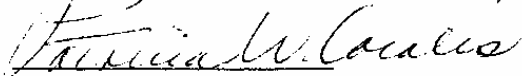
The Court concludes from the Record that Petitioners met all legal requirements for approval of their Rezoning Applications from A-1 to B-3 and that the Record fails to establish substantial competent evidence to support the Town Council's denial of the Applications. Accordingly, the Town Council's denial of the Applications failed to follow the essential requirements of law.

ACCORDINGLY, IT IS ORDERED AND ADJUDGED

Petitioners' respective Petitions for Writ of Common Law Certiorari and Amendment and Supplement to Petition for Writ of Common Law Certiorari (Case Nos. 00-011228 and 00-011230) are hereby GRANTED and the Town Council's denial of the Petitioners' Applications for rezoning to B-3 is hereby QUASHED. This matter is REMANDED to the Town Council for actions consistent with this Court's opinion, as this Court finds and orders that: (i) Petitioners met all objective criteria established by the City's Land Development Code, including, but not limited to, Sections 12-307 and 12-34(AA)(1), for the B-3 zoning as applied for in the Petitioners' respective rezoning Applications, Application, ZB 1-3-00, (filed by Griffin-Orange North, Inc.) and Application, ZB 1-4-00, (filed by Seventy-Five East, Inc.); (ii) the Zoning Applications are consistent with the Town's Comprehensive Plan; and (iii) the Zoning Applications complied with

all procedural requirements of the Town's Zoning and Land Development Code requirements.

DONE AND ORDERED in chambers in Fort Lauderdale, Broward County, Florida, on the
18th day of March, 2002, nunc pro tunc, this 15 day of April, 2002.


PATRICIA W. COCALIS
CIRCUIT JUDGE

cc: William S. Spencer, Esq.
Gunster, Yoakley & Stewart, P.A.
(Counsel for Petitioners)

Michael T. Burke, Esq.
Johnson, Anselmo, Murdoch, Burke & George, P.A.
(counsel for Respondent)

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